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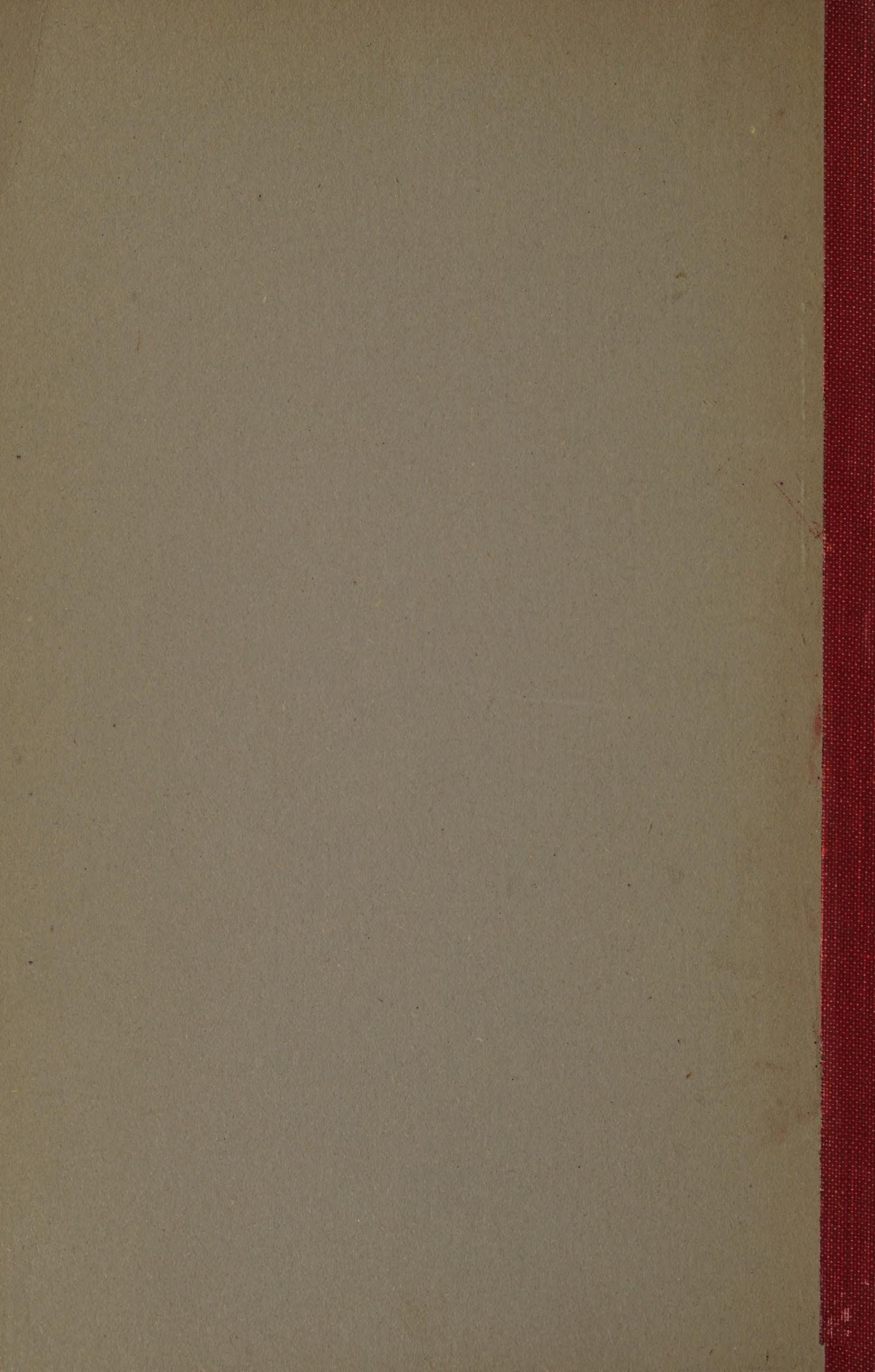
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OFFICE OF THE SOLICITOR

A brief statutory
history of the United
States Dept. of agricultur-
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U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
FRANCIS G. CAFFEY, Solicitor.

A BRIEF STATUTORY HISTORY OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE.

By FRANCIS G. CAFFEY, *Solicitor*.

(From "Case and Comment," February and March, 1916, vol. 22, Nos. 9 and 10.)

The development of the statutes under which the United States Department of Agriculture has come to occupy its present broad field has been neither uniform nor systematic. On its legal side, the department, like Topsy, has just "growed." In a crude, but only very crude, way, the history of the legislation affecting its work may be divided into four periods: First, anticipatory, prior to 1839; second, preliminary, from 1839 to 1862; third, formative, from 1862 to 1889; and fourth, expansive, since 1889.¹

ANTICIPATORY PERIOD.

For about 60 years subsequent to the Revolution the general interests of agriculture were left almost entirely to individual initiative. Federal activity was confined to relatively narrow limits, and was merely sporadic. There was no Committee on Agriculture in the House until 1820,² nor in the Senate until 1825.³

Shortly after the Revolution, following the example of Franklin while in England as agent of the colony of Pennsylvania during the years 1764 to 1775, American consuls and naval officers commenced the custom of sending home foreign seeds and cuttings for new crops, and of aiding in the introduction into the United States of new breeds of domestic animals. Even such small governmental participation was, in the beginning, rather extra-official.

From an early date after its acquisition, the public domain was availed of as a means of benefiting agriculture. In 1817 Congress

¹ Existing laws collected in *Laws Applicable to the United States Department of Agriculture* (1913), with first, second, and third supplements thereto, compiled by Otis H. Gates, under the direction of the Solicitor of the Department.

² May 3, 1820, *Annals of Congress*, Sixteenth Congress, first session, pt. 2, p. 2179.

³ *Register of Debates in Congress*, Nineteenth Congress, first session, cols. 5-7.

provided for the allotment of certain lands, within what was then known as the Mississippi Territory, to French immigrants for the purpose of promoting the cultivation of the vine and the olive.¹ In 1838, in recognition of services in introducing useful tropical plants into the United States, rendered by Henry Perrine, Congress granted to him and his associates a body of land in the southern extremity of the Peninsula of east Florida, for the propagation and cultivation of such plants.² Provisions were also made for the disposition of the public lands, which the Federal Government had acquired by the cession of the Northwest Territory, by the Louisiana Purchase, and otherwise, to settlers who would develop and improve them.

Likewise, during these years, the policy of encouraging agriculture among the Indians was inaugurated.³

Commencing very soon after the organization of the Federal Government, many important inventions of agricultural implements were made in the United States. Models of these were exhibited at the Patent Office in Washington, with the view of attracting the attention and interest of visitors, and thereby disseminating a knowledge of their use and practical application. In 1836 the Commissioner of Patents, independently of his office, assumed the responsibility of accepting contributions of new and valuable seeds and of distributing them among farmers throughout the country, and in his report to Congress urged the creation of a depository to receive and dispense articles of this kind.⁴ The indebtedness of the people to this official for his activities along these lines has never been fully recognized, and overstatement of it would be difficult.

PRELIMINARY PERIOD.

In 1839 Congress made an appropriation of \$1,000 for "the collection of agricultural statistics, and for other agricultural purposes."⁵ A similar item was included in the appropriations for the fiscal years 1842⁶ and 1844,⁷ and has been repeated annually ever since the latter date.⁸ The act of 1839 was the earliest statute containing even a suggestion of comprehensive dealing with the subject of agriculture by the Federal Government. It is notable that the \$1,000 was taken from the patent fund, which consisted of moneys deposited in the Treasury on account of applications for patents.

¹ Act of Mar. 3, 1817, 3 Stat. L., 374.

² Act of July 7, 1838, 5 Stat. L., 302.

³ Act of Mar. 1, 1793, 1 Stat. L., 329, 331; act of Mar. 3, 1819, 3 Stat. L., 516; act of May 7, 1822, 3 Stat. L., 690, etc.

⁴ House Document No. 112, Twenty-fifth Congress, second session, dated Jan. 1, 1838, for year 1837.

⁵ Act of Mar. 3, 1839, 5 Stat. L., 353, 354.

⁶ Act of Aug. 26, 1842, 5 Stat. L., 523, 533.

⁷ Act of Mar. 3, 1843, 5 Stat. L., 630, 642.

⁸ Act of June 17, 1844, 5 Stat. L., 681, 687.

This was the real beginning of what has now grown into a vast national enterprise.

The money first voted by Congress was expended to secure information as to the condition of crops in this country, and as to agricultural subjects in general. This was obtained principally through correspondence, at home and abroad, and the solicitation of contributions from scientific and practical agriculturists. The material collected was published annually in the report of the Commissioner of Patents. A part of the appropriation was also spent in collecting and distributing seeds, although this purpose was not expressly provided for by Congress until 1852.¹ For more than 20 years subsequent to the act of 1839 the collection of agricultural statistics and the purchase and distribution of seeds constituted the principal lines of agricultural work carried on by the Federal Government; but from time to time during this period Congress appropriated small sums for other objects, such as investigations for promoting agriculture and rural economy,² the collection and report of information in relation to the consumption of cotton in the several countries of the world,³ tests of the practicability of preparing flax and hemp as a substitute for cotton,⁴ and the introduction and protection of insectivorous birds.⁴

The several funds appropriated were expended, and the work involved was carried on, down to 1862, under the direction of the Commissioner of Patents, whose office was originally in the Department of State, and later, in 1849, transferred to the newly created Department of the Interior.

FORMATIVE PERIOD.

By an act of May 5, 1862,⁵ since generally called the organic act, the activities of the Government affecting agriculture were placed under a separate and distinct organization, known at the Department of Agriculture, in charge of a Commissioner of Agriculture. It did not rank, however, with the so-called executive departments, and the Commissioner was not entitled to a seat in the President's Cabinet.

The duties of the new department, prescribed by the organic act, were "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants." The Commissioner of Agriculture was also directed to

¹ Act of Aug. 31, 1852, 10 Stat. L., 76, 95.

² Act of May 15, 1856, 11 Stat. L., 10, 14.

³ Act of Mar. 3, 1857, 11 Stat. L., 221, 226.

⁴ Act of Mar. 1, 1862, 12 Stat. L., 348, 350.

⁵ Act of May 15, 1862, 12 Stat. L., 387; Rev. Stat., secs. 520, 521.

acquire and preserve all information concerning agriculture which he could obtain by means of books and correspondence, by practical and scientific experiments, by the collection of statistics, and by any other appropriate means within his power; to collect, as he might be able, new and valuable seeds and plants; to test, by cultivation, the value of such of them as might require such tests; to propagate such as might be worthy of propagation, and to distribute them among agriculturists.

While the department was under the direction of a Commissioner, the scope of its work was extended to cover many new objects of a special nature connected with the agricultural and live-stock interests of the country. Chief among these were investigations of diseases of cattle and domesticated animals, and of means for preventing, suppressing, and destroying such diseases,¹ of diseases of fruits, fruit trees, grains, and other useful plants,² of the habits of insects injurious to agriculture and horticulture,³ of the culture and manufacture of tea,⁴ of the culture and manufacture of silk,⁵ of encouragement of the culture of cotton and tobacco,⁶ of conditions and methods of forestry,⁷ of the manufacture of sugar from sorghum and sugar beets,⁸ of their cultivation,⁹ of the introduction of forage plants and grasses to increase the grazing capacity of arid districts,¹⁰ of the adulteration of food,¹⁰ of the textile strength of wool and other fibers,¹¹ of studies in economic ornithology and mammalogy,¹² of the reclamation of arid and waste lands,¹¹ and of the agricultural needs of the country west of the Rocky Mountains,¹³ the collection of statistics relating to oleomargarin, butterine, and similar products,¹⁴ experiments in agricultural chemistry,¹⁵ and the supervision of the work of agricultural experiment stations established by Congress in the colleges of the various States.¹⁶

During this period the work of the department became so enlarged and varied that it was necessary to divide it into distinct units. In 1880 Congress created six divisions—chemical, seed, entomological, statistical, microscopical, and botanical—in addition to the office of

¹ Act of Mar. 3, 1869, 15 Stat. L., 283, 298; act of June 20, 1878, 20 Stat. L., 206, 240.

² Act of June 30, 1886, 24 Stat. L., 100.

³ Act. of June 19, 1878, 20 Stat. L., 178, 204.

⁴ Act of June 16, 1880, 21 Stat. L., 292, 294.

⁵ Act of Jan. 20, 1883, 22 Stat. L., 408, 410; act of June 5, 1884, 23 Stat. L., 36, 39.

⁶ Act of Feb. 25, 1863, 12 Stat. L., 682, 691.

⁷ Act of Aug. 15, 1876, 19 Stat. L., 143, 167.

⁸ Act of Mar. 14, 1864, 13 Stat. L., 22, 23; act of June 16, 1880, 21 Stat. L., 292, 295.

⁹ Act of Mar. 3, 1881, 21 Stat. L., 381, 384.

¹⁰ Act of June 30, 1886, supra.

¹¹ Act of June 16, 1880, supra.

¹² Act of Mar. 3, 1885, 23 Stat. L., 353, 354; act of June 30, 1886, supra.

¹³ Act of Mar. 3, 1881, supra.

¹⁴ Act of May 19, 1882, 22 Stat. L., 89, 90.

¹⁵ Act of Feb. 25, 1863, supra.

¹⁶ Act of Mar. 2, 1887, 24 Stat. L., 440.

the Commissioner, the experimental garden and grounds, laboratory, museum, and library.¹

In 1884 a Bureau of Animal Industry was created, to be in charge of a veterinary surgeon appointed by the Commissioner of Agriculture.² It was made the duty of the chief of the new bureau to investigate and report upon the condition of domestic animals of the United States and their protection and use, to inquire into and report the causes of contagious, infectious, and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as shall be valuable to the agricultural and commercial interests of the country.

The first appropriation for investigations on forestry subjects was made in 1876.³ In 1886 a division of forestry was formed to carry on this work.⁴

In 1886, also, the divisions of economic ornithology and mammalogy,⁴ and of pomology,⁴ were created.

EXPANSIVE PERIOD.

In 1889 the department became an executive department, having at its head a Secretary, who occupies a place in the President's Cabinet.⁵ Its functions have grown to such an extent that now they touch almost all lines of agricultural endeavor of general interest to the citizens of the United States, as well as other lines of activity related to agriculture.

The units of organization of the department have been changed from time to time, to meet growing conditions, and, as at present recognized by Congress, are 16, composed of 10 bureaus, including the Forest Service and the States Relations Service, 4 offices, 2 divisions, and the library.

The agricultural appropriation act for the fiscal year 1915⁶ authorized and directed the Secretary of Agriculture to prepare and submit to Congress a plan for reorganizing, redirecting, and systematizing the work of the department as the interests of economical and efficient administration may require.

The plan of reorganization was submitted in the Book of Estimates of appropriations for the fiscal year 1916, as a basis for incorporation in the agricultural appropriation act for that year, if approved by Congress, and has been approved by the act of March 4, 1915.⁷

¹ Act of June 16, 1880, *supra*.

² Act of May 29, 1884, 23 Stat. L., 31.

³ Act of Aug. 15, 1876, *supra*.

⁴ Act of June 30, 1886, *supra*.

⁵ Act of Feb. 9, 1889, 25 Stat. L., 659.

⁶ Act of June 30, 1914, 38 Stat. L., 415, 441.

⁷ Act of Mar. 4, 1915, 38 Stat. L., 1086.

The previously existing form of organization, with its several bureaus, offices, and divisions, was not changed, except that one office was made a bureau under a new name, an additional office was created, and new designations were given to two other offices.

The important changes involve, first, the reapportionment of certain lines of work among different bureaus and offices, with the view of avoiding any unnecessary duplication, and of placing each line in the subdivision best adapted for handling it; and, second, the division of the activities of each bureau and office into three distinct and logical groups, comprising its regulatory, research, and extensional or educational functions.

The general aims of the plan are to systematize the organization of the department and to coordinate and develop all its units to the point of highest usefulness to the people of the United States.

During its early stages the work of the department was exclusively, and in much the greater part is still, purely investigative, experimental, and educational. The legal authority for all such activities follows as a mere incident to the appropriations made by Congress for carrying them on. No substantive laws, other than those generally governing the conduct of officials and the expenditure of money, alike applicable to all departments of the Government, are essential in respect to them. In fact, many of the bureaus of the Department of Agriculture exist solely by virtue of the annual appropriation acts, and would be completely disestablished by mere failure of Congress to provide funds for their continuance, without the repeal of any existing statute.

As time has gone on, however, Congress has conferred on the Secretary of Agriculture, and occasionally on a bureau of the department, duties and powers of a wholly different nature, and having much to do with the conduct of citizens. In all such instances the laws relate directly to activities already in progress in the department. Doubtless, because of the accumulated scientific knowledge and the existence of appropriate governmental organizations in the department necessary for the proper enforcement of statutes of this character, Congress has deemed it more in the interest of both economy and efficiency to make available the services of the department than to create wholly new machinery to carry out its purposes.

A brief résumé of the chief lines of work, other than regulative, conducted by each of its branches is essential in order to convey a clear idea of the scope and character of the present activities of the department. The principal regulative activities of the department as a whole will be described separately.

BUREAU ORGANIZATION; ADMINISTRATIVE, SCIENTIFIC, AND EDUCATIONAL ACTIVITIES.

SECRETARY'S OFFICE.

The office of the Secretary exercises general supervisory authority and administrative functions respecting the entire personnel and work of the department. Such of the activities of this office as are not under the immediate charge of the Secretary or the Assistant Secretary are carried on through various subdivisions. These embrace the Office of the Chief Clerk, the Office of Information, the Office of Inspection, the Office of Exhibits, the Office of Forest Appeals, and the Office of the Solicitor.

The statutes affecting the department specifically mention the Chief Clerk¹ and the Solicitor.² Within the limitations imposed by these statutes, which are few, and by the civil-service law, and to the extent that appropriations are available, the Revised Statutes confer on the Secretary complete power to organize his office as he deems best.³ All of the officials of the department, except the Secretary, the Assistant Secretary, the Chief of the Weather Bureau, and the Solicitor, are in the classified civil service.

The Assistant Secretary may perform such duties as are assigned to him by the Secretary.⁴ In case of the absence or disability of the Secretary, the Assistant Secretary may act as Secretary.⁵ If both the Secretary and the Assistant Secretary be absent or disabled, the Chief of the Weather Bureau, the only other official of the department whose appointment is subject to confirmation by the Senate, may act as Secretary.

The Chief Clerk is charged by law with the supervision of the duties of the clerks in the department⁶ and the superintendence of its buildings.⁷ He enforces the general administrative regulations of the department and makes provision for its services and supplies.

The legal work of the department is performed, in accordance with the act of May 26, 1910,⁸ under the supervision and direction of the Solicitor, who is attached to the Secretary's office. This is large and increasing in volume, due principally to the numerous regulative acts, to the large amount of forest land and other property placed under the administration of the department, and to the great number of land titles to be examined, under the Weeks Forestry Law, in the White Mountains and in the Southern Appalachian region.

¹ Rev. Stat., secs. 522 and 523.

² Act of May 26, 1910, 36 Stat. L., 416.

³ Rev. Stat., secs. 161, 166, 169, 523; act of Mar. 4, 1907, 34 Stat. L., 1256, 1280.

⁴ Act of Feb. 9, 1889, *supra*; act of Mar. 4, 1907, *supra*.

⁵ Rev. Stat., sec. 177.

⁶ Rev. Stat., secs. 173 and 174.

⁷ Act of Apr. 23, 1904, 33 Stat. L., 276.

⁸ Act of May 26, 1910, *supra*.

OFFICE OF FARM MANAGEMENT.

The Office of Farm Management, created in connection with the departmental reorganization in 1915, and which, administratively, is closely associated with the office of the Secretary, is engaged in investigating and encouraging the adoption of improved methods of farm management and farm practice and in studying questions relative to the clearing of "logged-off" lands, with a view to their utilization for agricultural and dairying purposes.

WEATHER BUREAU.

For many years prior to the establishment of the Department of Agriculture in 1862 the study of the climate and storms of this country had been encouraged by the several departments of the Government and by the Smithsonian Institution; information on these subjects was included, as agricultural statistics, in various reports of the Commissioner of Patents. Meteorological data gathered by the Smithsonian observers were published in the monthly reports of the Department of Agriculture from 1863 to 1872. In the latter year Congress made an appropriation to enable the Signal Office of the War Department to take observations and report on storms for the benefit of agriculture and commerce.¹ This work was conducted by the Signal Service of the Army from that time until 1890,² when it was transferred to the newly created Weather Bureau, in the Department of Agriculture.

This bureau is in charge of the forecasting of weather, the issuing of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines, the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and the rainfall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interest of agriculture and commerce, the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States or as are essential for the proper execution of the foregoing duties, and, in general, investigations in meteorology, climatology, seismology, evaporation, and aerology.

BUREAU OF ANIMAL INDUSTRY.

The Bureau of Animal Industry is primarily concerned with the promotion of the live-stock and meat industries of the United States.

¹ Act of June 10, 1872, 17 Stat. L., 347, 366.

² Act of Oct. 1, 1890, 26 Stat. L., 653.

It conducts scientific investigations of the causes, prevention, and treatment of diseases of domestic animals; investigates the actual existence of communicable diseases of such animals, and aids in their control and eradication; and carries on investigations and experiments in the dairy industry, animal husbandry, and the feeding and breeding of animals, including poultry and ostriches. It also is in direct charge of the important work of administering the meat-inspection act, the cattle quarantine act, the 28-hour act, the diseased animal transportation acts, the virus act, and the act regulating the shipment in interstate or foreign commerce of process or renovated butter. The inspection and quarantine work involved in the administration of these statutes is notably extensive.

BUREAU OF PLANT INDUSTRY.

The Bureau of Plant Industry was originally formed by a combination of five separate divisions in 1901,¹ and is chiefly interested in the problems of agricultural production. It conducts investigations of the causes, prevention, and treatment of diseases of plants, including fruit, ornamental, shade, and forest trees; of crop physiology and breeding; of soil bacteriology; of plant nutrition; of soil fertility; of the acclimatization and adaptation of crop plants introduced from tropical regions; of drug and poisonous plants; of plant physiology and fermentation; of crop technology; of fiber plants; of biophysics; of seed testing; of plants suitable for paper making; of the improvement and production of cereals; of alkali and drought-resistant crops; of economic and systematic botany; of the improvement and utilization of wild plants and grazing lands; of dry-land agriculture; of western irrigation; of the utilization of land reclaimed under the reclamation act and of other areas in the arid and semiarid regions; of pomology; of horticulture; of the introduction into the United States of foreign seeds and plants; of forage crops; of cotton; of tobacco; of flax; of broom corn; of sugar beets; and of sugar-cane sirup. This bureau is also in charge of the department's experimental garden and grounds, the experimental farm at Arlington, Va., the annual governmental distribution of seeds, and the administration of the so-called seed importation act.

FOREST SERVICE.

The Forest Service is an evolution from the activity of investigating forestry subjects that was begun in the department in 1876 and was continued in charge of a Division of Forestry in 1886. The name of this branch was changed to the Bureau of Forestry in 1902,² and to the Forest Service in 1905.³

¹ Act of Mar. 2, 1901, 31 Stat. L., 922.

³ Act of Mar. 3, 1905, 33 Stat. L., 861, 872.

² Act of June 3, 1902, 32 Stat. L., 295.

For many years after its inception this work was purely investigative, but it paved the way for the establishment of the present system of national forests.

The investigative, experimental, and educational work now carried on by the Forest Service includes investigations of methods for wood distillation, for the preservative treatment of timber, and for timber testing; the testing of woods to ascertain if they be suitable for paper making; investigations and tests within the United States of foreign woods of commercial importance to industries in the United States; other investigations and experiments to promote economy in the use of forest products; experiments and investigations of range conditions within the national forests and elsewhere on the public range; of methods for improving the range by reseeding, regulation of grazing, and other means, and of seeding and tree planting within the national forests; silvicultural, dendrological, and other experiments and investigations to determine the best methods for the conservative management of forests and of forest lands; the estimating and appraising of timber and other resources on the national forests; and miscellaneous forest investigations.

The first forest reservation was created in California by an act of Congress approved September 25, 1890.¹ Previously, from time to time, Congress had passed various acts relating to the protection, use, and disposal of the timber and timbered lands of the United States. As early as 1817 an act was passed providing for the reservation of public lands containing live oak and red cedar timber for the use of the Navy, and prohibiting trespass on the reservations under severe penalties;² but not until nearly three-quarters of a century later did Congress enact a broad, general statute on the subject.

In 1891 an act was passed authorizing the President to set apart and reserve by public proclamation, in any State or Territory having public land bearing forests, any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations.³ Almost all of the national forest reservations have been created under this act; some have been created by special act of Congress. By reason of certain amendments to the act of 1891, no forest reservation can be established in the States of Washington, Oregon, California, Idaho, Montana, Wyoming, and Colorado without special act of Congress.⁴ There are now (July 1, 1915) 155 national forests, so designated since 1907, including those in Alaska and Porto Rico, with a total gross area of 184,611,596 acres and a net area of 163,274,063 acres. In addition, there are in the

¹ Act of Sept. 25, 1890, 26 Stat. L., 478.

² Act of Mar. 1, 1817, 3 Stat. L., 347; Rev. Stat., sec. 2450.

³ Act of Mar. 3, 1891, 26 Stat. L., 1095.

⁴ Act of Mar. 4, 1907, 34 Stat. L., 1256, *supra*; act of June 25, 1910, 36 Stat. L., 847; act of Aug. 24, 1912, 37 Stat. L., 497.

Eastern States 17 areas, embracing 1,396,549 acres; consisting of 348,291 acres already acquired, 983,290 acres covered by existing contracts of purchase, and 32,485 acres approved for purchase by the National Forest Reservation Commission, under the Weeks Act, and 32,483 acres, known as the Olmstead lands (the title to a portion of which is in dispute), transferred by special act of Congress to the Secretary of Agriculture for administration.

Although the act of 1891 gave the President power to create forest reservations, no provision was made for their administration or use until the passage of the act of June 4, 1897.¹ The latter declared that no public forest reservation shall be established except to improve and protect the forests within the reservations, or for the purpose of securing favorable conditions of waterflow, and to furnish a continuous supply of timber for the use and interests of citizens of the United States. These, broadly, are the purposes for which national forests are created and administered.

The administration of the forest reservations was conferred by the act of 1897 on the Secretary of the Interior. It placed upon him the duty to make provisions for the protection of the public forests and forest reservations against destruction by fire and depredations, and empowered him to make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction, and to sell the dead, matured, or large growth of trees found upon such reservations for the purposes of preserving the living and growing timber and promoting the younger growth. The Secretary was also authorized to permit, under regulations to be prescribed by him, the use of timber and stone on such reservations by bona fide settlers, miners, residents, and prospectors for minerals for certain domestic purposes, such timber to be used within the State or Territory where the reservation is located.

The Secretary of the Interior continued until 1905 to perform the duties prescribed by the act of 1897, the Department of Agriculture merely giving to his department expert advice on forestry questions. In 1905² the administration of forest reservations was transferred to the Secretary of Agriculture, with whom the power has since remained.

The administration, protection, and improvement of the national forests are in direct charge of the Forest Service, and comprise the principal part of the work of that bureau. The duties involved are manifold, and in addition to those already described, which were transferred from the Secretary of the Interior, include the reseeding

¹ Act of June 4, 1897, 30 Stat. L., 11, 34. ² Act of Feb. 1, 1905, 33 Stat. L., 628.

and replanting of forest areas, the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements on national forests, and the exercise of administrative functions under various acts that have been passed since 1897 relating to the control and utilization of the national forests.

By virtue of his authority to regulate the use and occupancy of the national forests, the Secretary of Agriculture administers large areas of lands for grazing purposes by a system of permits or licenses to stock owners. In addition, permits are granted by him, under prescribed conditions, to use and occupy national forest lands for practically all purposes not inconsistent with the objects of the reservations, including, among others, schools, churches, factories, power plants, transmission lines, reservoirs, conduits, stores, residences, and roadways. During the course of its administration of the national forests an efficient and extensive system of fire protection has been developed by the Forest Service, and the sale and free use of national forest timber have grown into a large and important business.

There is a large body of laws, enacted since 1897, relating to national forests, aimed to carry out the fundamental purposes for which they were created and at the same time to permit the utilization of their resources consistent with a policy of conservation. All mineral lands therein are subject to location and entry.¹ Lands within their limits, chiefly valuable for agriculture, may be opened to entry under the homestead laws.² Rights of way may be acquired, under certain conditions, for railroads,³ for irrigation purposes,⁴ for municipal and mining purposes,⁵ for milling and the reduction of ores,⁶ for poles and lines for telegraph and telephone purposes,⁷ and for the generation and distribution of electrical power,⁸ and, under a recent act,⁹ permits may be granted, for periods not exceeding 30 years, for the use and occupancy of national forest lands for summer homes, hotels, stores, or other structures needed for recreation or public convenience.

The national forests in the Western States, Alaska, and Porto Rico were all created by the reservation of portions of public lands of the United States. By act of March 1, 1911,⁹ commonly known as the Weeks law, Congress authorized the purchase, in behalf of,

¹ Act of June 4, 1897, 30 Stat. L., 1, 7.

² Act of June 11, 1906, 34 Stat. L., 233; see also act of Aug. 8, 1916, Public No. 180.

³ Act of Mar. 3, 1899, 30 Stat. L., 1214, 1233.

⁴ Act of Mar. 3, 1891, supra.

⁵ Act of Feb. 1, 1905, supra.

⁶ Act of Mar. 4, 1911, 36 Stat. L., 1235, 1253.

⁷ Act of Feb. 15, 1901, 31 Stat. L., 790.

⁸ Act of Mar. 4, 1915, supra.

⁹ Act of Mar. 1, 1911, 36 Stat. L., 961.

the United States, of lands situated on the watersheds of navigable streams, in States consenting to such acquisition, for the purpose of preserving the navigability of such streams. The act further provides that, after purchase, these lands shall be permanently reserved, held, and administered as national forest lands, under the various laws relating to national forests. Under it large areas have been acquired, or are in the course of acquisition, by the United States in the Eastern States, principally in the Southern Appalachian and the White Mountains. These areas are administered by the Forest Service.

BUREAU OF CHEMISTRY.

The Bureau of Chemistry is an outgrowth of the appropriation made in 1848¹ for chemical analysis of vegetable substances produced and used for the food of man and animals in the United States. It is engaged in chemical investigations for other departments of the Government; in investigation in agricultural chemistry and the character of the chemical and physical tests applied to American food products in foreign countries, and in the inspection, upon request, of such products before export; in investigations relating to poultry, eggs, fish, oysters, and shellfish; in biological investigations of food and drug products and substances used in the manufacture thereof; and in the study and improvement of methods of utilizing by-products of citrus fruits. In addition to its purely investigative work, this bureau administers the food and drugs act, involving the examination of numerous specimens of foods and drugs for the purpose of determining whether they are adulterated or misbranded within the meaning of the act.

BUREAU OF SOILS.

The Bureau of Soils conducts chemical and physical investigations of soils, investigations of possible sources of natural fertilizers within the United States, and soil-survey investigations, and assists in the examination and classification of agricultural lands in the national forests.

BUREAU OF ENTOMOLOGY.

The Bureau of Entomology conducts investigations relating to economic entomology, the history and habits of insects injurious or beneficial to agriculture, horticulture, and arboriculture, insects affecting the health of man and domestic animals, and the best means of destroying those found to be injurious. It is also engaged in checking the spread of the gipsy and brown-tail moths.

¹ Act of Aug. 12, 1848, 9 Stat. L., 285.

BUREAU OF BIOLOGICAL SURVEY.

The Bureau of Biological Survey is in charge of the maintenance of various game, mammal, and bird reservations established by Executive orders and by acts of Congress, including, among others, the Montana National Bison Range, the winter elk refuge in Wyoming, the Sully's Hill National Game Preserve in North Dakota, the Wind Cave Preserve in South Dakota, and the Aleutian Islands Reservation in Alaska. It conducts investigations of the food habits of North American birds and mammals in relation to agriculture, horticulture, and forestry, of biological subjects, including the relations, habits, geographic distribution, and migrations of animals and plants, and of diseases of wild ducks in the Salt Lake Valley region in Utah; carries on experiments and demonstrations in destroying animals injurious to agriculture and animal husbandry; makes investigations and experiments in connection with the rearing of fur-bearing animals; and cooperates with the local authorities in the protection of migratory birds. The bureau is also in charge of the administration of the Lacey Act and the migratory bird act.

BUREAU OF CROP ESTIMATES.

The present activities of the Bureau of Crop Estimates, formerly the Bureau of Statistics, are an outgrowth of the work initiated under authority of the original appropriation of \$1,000 made in 1839 for the collection of agricultural statistics and other purposes. The bureau performs important services in securing and compiling data relating to agriculture, and particularly in making and publishing periodically crop and live-stock estimates.

STATES RELATIONS SERVICE.

In 1862¹ Congress granted to the several States portions of the public lands to be sold, the proceeds to be applied to the endowment, support, and maintenance of at least one college in each State, where the leading object should be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the respective States prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. Appropriations of additional sums were made by Congress in 1890² and in 1907³ for the more complete endowment and maintenance of these colleges.

¹ Act of July 2, 1862, 12 Stat. L., 503.

² Act of Aug. 30, 1890, 26 Stat. L., 417.

³ Act of Mar. 4, 1907, 34 Stat. L., 1256, 1281.

In 1887¹ Congress made appropriations providing, under prescribed conditions, for the establishment of agricultural experiment stations in the various land-grant colleges created under the act of 1862. Their purpose was to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science. Additional appropriations were made for these agricultural experiment stations in 1906.²

The act of May 8, 1914,³ commonly known as the Smith-Lever Act, made appropriations, under prescribed conditions, for agricultural extension work to be carried on by the various land-grant colleges in cooperation with the United States Department of Agriculture, consisting of the giving of instruction and practical demonstrations in agriculture and home economics to persons not attending, or resident in, said colleges in the rural communities, and imparting to such persons information on those subjects through field demonstrations, publications, and otherwise.

In the act of 1862 no provision was made for the exercise of Federal supervision or control of expenditures by the States of funds derived from the operation of the act. All that was required was that reports should be made annually of the progress of each college and of the sales of land script and the use made of the proceeds thereof. The act of 1887 likewise made no provision for effective control by the United States of expenditures of the funds appropriated by Congress. In addition to annual reports, it required the State experiment stations to publish bulletins periodically, and made it the duty of the Commissioner (now Secretary) of Agriculture to furnish certain forms, to indicate lines of inquiry, and to give advice and assistance. Some control of expenditures was reserved to the Federal Government in the act of 1906, which, in addition to requiring annual reports of expenditures, made the payment of the yearly sums appropriated to each State and Territory conditional upon the ascertainment by the Secretary of Agriculture that it had complied with the provisions of the act and was entitled to receive its share of the appropriations for agricultural experiment stations. The Smith-Lever Act of 1914, however, in addition to requirements and conditions similar to those imposed in the act of 1887, as a prerequisite to sharing in appropriations, provides in detail a comprehensive and effective scheme for supervision and the control of expenditures. It not only requires annual reports to be made by the agricultural colleges of receipts from all sources and expenditures for carrying out the objects of the act, but expressly

¹ Act of Mar. 2, 1887, supra.

² Act of Mar. 16, 1906, 34 Stat. L., 63.

³ Act of May 8, 1914, 38 Stat. L., 372.

limits the scope of activities of the colleges under the act to cooperative work carried on in such manner as shall be mutually agreed upon by each college and the Secretary of Agriculture, and makes advance approval by the Secretary of Agriculture of plans for the work to be carried on during each year an indispensable condition precedent to the payment to the State colleges of any of the funds appropriated by Congress.

The States Relations Service was created as a new bureau in connection with the reorganization of the department in 1915, and supersedes the Office of Experiment Stations. It carries out the details of the duties conferred on the Secretary of Agriculture under the acts providing for the establishment of land-grant colleges in the various States, and for agricultural experiment stations in these colleges, and under the Smith-Lever Act. It is also engaged in the establishment and maintenance of agricultural experiment stations in Alaska, Hawaii, Porto Rico, and Guam, in the conduct of farmers' cooperative demonstrations, in studying and demonstrating the best methods of meeting the ravages of the cotton-boll weevil, in investigating and reporting upon the organization and progress of farmers' institutes and agricultural schools in the several States and Territories, and similar organizations in foreign countries, and in investigations of improved methods of agricultural practice, and the relative utility and economy of agricultural products for food, clothing, and other uses in the home.

OFFICE OF PUBLIC ROADS AND RURAL ENGINEERING.

The first investigations by the department in regard to public roads were authorized, and commenced, in 1894.¹ This line of work is now carried on by the Office of Public Roads and Rural Engineering. Its name was changed from the Office of Public Roads in connection with the departmental reorganization in 1915, which involved the transfer thereto of certain activities of an engineering nature. It is one illustration of an office that has no independent statutory basis, but exists solely by virtue of annual appropriation acts. This office conducts inquiries in regard to systems of road management, investigations, and experiments as to methods of road construction and maintenance, and road materials, and gives expert advice on these subjects. It also investigates and advises upon the various phases of farm irrigation, farm drainage, the drainage of swamp and other wet lands that may be made available for agricultural purposes, farm domestic water supply and drainage disposal, the construction of farm buildings, and other rural engineering problems involving mechanical principles.

¹ Act of Aug. 8, 1894, 28 Stat. L., 264, 266.

OFFICE OF MARKETS AND RURAL ORGANIZATION.

The Office of Markets and Rural Organization is one of the newer branches of the department, and deals with the problems of agricultural distribution and marketing, and the promotion of cooperative efforts among farmers. It is engaged in investigating and diffusing information on subjects connected with the marketing and distributing of farm and manufactured food products, the purchasing of farm supplies, and cooperation among farmers in matters of rural credits and other forms of cooperation in rural communities. It also conducts cotton investigations, and is in direct charge of the administration of the United States cotton futures act.

MISCELLANEOUS.

Other branches of the department are the Division of Publications, which supervises the publication work of the department; the Division of Accounts and Disbursements, which handles its fiscal affairs; and the Library. The last two are, administratively, closely related to the Secretary's office, but are recognized as separate units by the departmental appropriation acts. The Chief of the Division of Accounts and Disbursements is also Disbursing Clerk of the department, and, as such, is governed by various statutes applicable to that officer.

Miscellaneous activities of the department include encouragement and aid in the agricultural development of Government reclamation projects, and assistance to settlers thereon; experiments and demonstrations in live-stock production in the cane-sugar and cotton districts of the United States, and investigations of the grading, weighing, and handling of naval stores.

The plant quarantine act is administered by the Federal Horticultural Board, which is provided for therein. The insecticide act is administered jointly by the Bureaus of Chemistry, Entomology, Plant Industry, and Animal Industry through the medium of a board, known as the Insecticide and Fungicide Board, created for the purpose by the Secretary of Agriculture.

REGULATORY STATUTES.

There are numerous statutes, or sets of statutes, administered by the department, confined almost entirely to various kinds of substantive law enforcement, as distinguished from its scientific and educational work. In connection with these the Department of Agriculture, through the Solicitor, cooperates largely with the Department of Justice, and to some extent with the Department of the Interior.

The first regulative function conferred on the Department of Agriculture was by act of May 29, 1884,¹ which created the Bureau of Animal Industry. The provisions of this act were aimed chiefly to prevent the exportation and the interstate shipment or transportation of live stock affected with contagious, infectious, or communicable diseases. The act was administered in part by the Secretary of the Treasury and in part by the Commissioner of Agriculture.

Since 1884 administrative functions have been conferred on the Secretary of Agriculture by sundry acts. In addition to the statutes relating to the control and utilization of the national forests, which have already been discussed, the principal regulative acts that have been placed under his administration are the meat inspection act,² the cattle quarantine act,³ the diseased animal transportation acts,⁴ the twenty-eight hour act,⁵ the virus act,⁶ the food and drugs act,⁷ the insecticide act,⁸ the plant quarantine act,⁹ the seed importation act,¹⁰ the Lacey Act,¹¹ the migratory bird act,¹² and the United States cotton futures act.¹³

The meat inspection act is primarily a health measure, designed to guard the public against the imposition of unwholesome meats and meat food products. In general, it provides for the maintenance by the Department of Agriculture of a system of inspection of establishments in the United States in which cattle, sheep, swine, or goats are slaughtered, or the carcasses or meat food products of which are prepared, for interstate or foreign commerce, and prohibits the shipment or transportation of such articles in interstate or foreign commerce unless they bear the mark of Federal inspection and approval as required by the act. By the tariff act of October 3, 1913,¹⁴ the Secretary of Agriculture was vested with similar control of meats imported into this country. About 60 per cent of all cattle, sheep, swine, and goats slaughtered in the United States are killed, and the products therefrom prepared, under inspection by the department. The provisions of the meat inspection act were extended to apply to reindeer in 1914.¹⁵ In addition to the inspection provided for by the meat inspection act, the department is charged with the inspection of

¹ Act of May 29, 1884, *supra*.

² Act of June 30, 1906, 34 Stat. L., 669, 674.

³ Act of Mar. 3, 1905, 33 Stat. L., 1264.

⁴ Act of May 29, 1884, *supra*; act of Feb. 2, 1903, 32 Stat. L., 791.

⁵ Act of June 29, 1906, 34 Stat. L., 607.

⁶ Act of July 1, 1902, 32 Stat. L., 728; act of Mar. 4, 1913, 37 Stat. L., 828, 832.

⁷ Act of June 30, 1906, 34 Stat. L., 768.

⁸ Act of Apr. 26, 1910, 36 Stat. L., 331.

⁹ Act of Aug. 20, 1912, 37 Stat. L., 315.

¹⁰ Act of Aug. 24, 1912, 37 Stat. L., 506.

¹¹ Act of May 25, 1900, 31 Stat. L., 187; act of Mar. 4, 1909, 35 Stat. L., 1088, 1137.

¹² Act of Mar. 4, 1913, 37 Stat. L., 828, 847.

¹³ Act of Aug. 18, 1914, 38 Stat. L., 693.

¹⁴ Act of Oct. 3, 1913, 38 Stat. L., 114, 159.

¹⁵ Act of June 30, 1914, *supra*.

dairy products intended for export, and of process or renovated butter,¹ and with the sanitary inspection of renovated butter factories.²

The cattle quarantine act authorizes the Secretary of Agriculture to quarantine any State, Territory, or the District of Columbia, or any portion thereof, on account of the existence therein of contagious, infectious, or communicable diseases of animals, and prohibits the movement, except under certain conditions, of any cattle or other live stock from the quarantined areas into any other State, Territory, or the District of Columbia.

The diseased animal transportation acts prohibit the transportation, delivery for transportation, and driving on foot, in interstate commerce, of live stock affected with any contagious, infectious, or communicable disease, and authorize the Secretary of Agriculture to take measures to prevent the exportation and interstate transportation of live stock from any place within the United States where he may have reason to believe such diseases may exist, and to make regulations and take measures to prevent the introduction into the United States, and the dissemination among the various States and Territories, and in the District of Columbia, of the contagion of such diseases. Another act³ authorizes the Secretary of Agriculture, under certain conditions, to regulate the importation of neat cattle, sheep, and other ruminants, and swine, and to inspect those that are imported or that are intended for exportation; prohibits the importation of those that are diseased or infected with disease, or which have been exposed to such infection within 60 days next before their exportation; and forbids those found upon inspection to be infected or exposed to infection so as to be dangerous to other animals to be placed upon any vessel for exportation.

The 28-hour act prohibits the confinement in railroad cars and boats of animals in course of interstate transit for a period longer than 28 hours without being unloaded for feed, water, and rest, for five hours, except that, upon proper written request in advance by the owner or person in custody of the shipment, the period of confinement may be extended to 36 hours; provided that carriers may relieve themselves of the duty of unloading by supplying ample facilities for feed, water, and rest on board their cars or boats.

The virus act regulates the interstate shipment, the importation, and the preparation and sale in the District of Columbia and elsewhere under the jurisdiction of the United States, of viruses, serums, toxins, and analogous products intended for use in the treatment of domestic animals.

¹ Act of May 23, 1908, 35 Stat. L., 251, 255; act of May 9, 1902, 32 Stat. L., 193.

² Act of Aug. 10, 1912, 37 Stat. L., 269, 273.

³ Act of Aug. 30, 1890, 26 Stat. L., 414.

The food and drugs act is primarily intended to enforce honest labeling of foods and drugs; and, secondarily, to conserve health in so far as it is affected by these articles. In general, it prohibits the manufacture within any Territory, including the insular possessions of the United States, or the District of Columbia, and the shipment in interstate or foreign commerce, of foods and drugs which are adulterated or misbranded within the meaning of the act. It also contains machinery for preventing the importation of adulterated foods and drugs.

The provisions of the insecticide act are patterned, almost literally, after the food and drugs act, except that they are made applicable to insecticides, Paris greens, lead arsenates, and fungicides, instead of foods and drugs.

The plant quarantine act is designed to prevent the introduction and spread of plant diseases in the United States. It contains various provisions governing the quarantine of portions of the United States on account of the existence of plant diseases, and regulating interstate movement from quarantined areas, and the importation of nursery stock and other plants and plant products.

The seed importation act forbids the importation of specified classes of seeds which are adulterated or unfit for seeding purposes as defined in the act, except that such seeds may be admitted under bond, on condition that they be recleaned and the refuse disposed of as required by the act and the regulations of the Secretary of Agriculture thereunder.

The Lacey Act is intended primarily to assist the States in the conservation of the game supply of the United States and to check the importation of birds and animals that may be injurious to agriculture or horticulture. Its chief provisions regulate the importation of birds and animals, and prohibit, under penalty, the shipment and the transportation in interstate commerce of any foreign animals or birds, the importation of which is prohibited, or the dead bodies, or parts thereof, of any wild animals or birds which are killed or shipped in violation of the laws of the State, Territory, or District in which they were killed or from which they were shipped. It also requires the conspicuous labeling of packages of game shipped in interstate and foreign commerce.

The migratory bird act is another measure designed to conserve the game supply of the United States. The objects of its protection are the insectivorous and other birds which in their northern and southern migrations pass through or do not remain permanently within the borders of any single State or Territory. These are declared to be within the custody and protection of the Government of the United States. The Department of Agriculture is authorized

to divide the country into districts and to prescribe closed seasons for migratory birds within said districts. It is made a criminal offense to kill, seize, or capture any of such birds during a closed season, or otherwise to violate any of the provisions of the act or the regulations thereunder.

The cotton futures act is, on its face, primarily a taxing statute, but it also operates to regulate the business of cotton exchanges in the United States with the view of eliminating the existing evil features of future dealing in cotton. It imposes generally on all contracts of sale of cotton for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business a tax of 2 cents for each pound of cotton involved in such contracts. It then provides for exemption from this tax of such contracts if they comply with certain conditions specified in the act, which are aimed to correct the present evils of future dealing, with adequate machinery for carrying the scheme into effect.

CONSTITUTIONALITY.

Owing to the differences in character of the two kinds of statutes affecting the department, the one merely providing money for carrying on the work and the other prescribing rules for the conduct of citizens, wholly separate considerations bear upon the questions of their validity. In addition, each regulative law must be examined on its own merits.

During the debates over adopting, and soon after the adoption of, the Constitution, many of our leading publicists expressed themselves in favor of agriculture as an object which ought to receive the special care and consideration of the National Government. They differed, however, as to the nature of the aid or encouragement that should be given. Among those who so expressed themselves were George Washington,¹ Thomas Jefferson,² James Madison,³ Gouverneur Morris,⁴ Charles Pinckney,⁵ and William R. Davie,⁶ all of whom were delegates in the convention which framed the Federal Constitution. Washington, when President, suggested the establishment by Congress, at the seat of government, of a national board of

¹ First Annual Address to Congress, Jan. 8, 1790, Messages and Papers of the Presidents, vol. 1, p. 66.

² First Inaugural Address, Mar. 4, 1801, Messages and Papers of the Presidents, vol. 1, pp. 323, 324.

³ First Inaugural Address, Mar. 4, 1809, Messages and Papers of the Presidents, vol. 1, p. 468.

⁴ In the Federal Constitutional Convention, Aug. 20, 1787, Elliot's Debates, vol. 5, p. 446.

⁵ In the South Carolina Constitutional Convention, May 14, 1788, 4 Elliot's Debates, p. 322.

⁶ In the North Carolina Constitutional Convention, July 24, 1788, 4 Elliot's Debates, pp. 17, 20.

agriculture to look after the interests of the farmer.¹ In the constitutional convention, Alexander Hamilton indicated his belief that agriculture was one of the great objects to be secured by a national or general government.² Later, during the same year, in the Federalist, paper No. 17, he considered it as a matter that should be provided for purely by local legislation. Some years afterwards, in the draft submitted by him as a basis for President Washington's address to Congress, on December 7, 1796, Hamilton again expressed the view that the subject was one to be treated from a national standpoint.³

Many lawyers and lay students of our form of government have especially questioned the power of Congress to authorize any investigative, experimental, or educational work relating to agriculture, such as is now, and for many years past has been, performed by the United States Department of Agriculture. Without entering into a full consideration, it is sufficient, for the purposes of this article, to suggest that Article I, section 8, clause 1, of the Constitution confers on Congress ample authority to enact the existing legislation on the subject. This provides that

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

There appear to be no cases adjudicating the precise point, but the general extent of the authority of Congress under this clause formed an important subject of discussion by our early statesmen and jurists, and has been alluded to by the courts.

The words, "provide for * * * the general welfare," have been variously interpreted. The respective contentions may be roughly divided into four classes: First, that the words are wholly meaningless; second, that they confer on Congress an independent power to enact any measure that may provide for the general welfare; third, that they convey no power in themselves, but limit the purposes for which the taxing power may be exercised to those expressed in, or necessarily incident to, the other enumerated powers conferred on Congress by the Constitution; and, fourth, that they convey no power in themselves, but limit the purposes for which the taxing power may be exercised to those which conduce to the general interests of the United States, whether they be expressed in, or incident to, one of the other enumerated powers or not.

¹ Eighth Annual Address to Congress, Dec. 7, 1796, Messages and Papers of the Presidents, vol. 1, p. 202.

² June 19, 1787, Elliot's Debates, vol. 1, p. 427.

³ Hamilton's Works, vol. 7, p. 612.

The first and second views are extreme, and are not now seriously sought to be maintained, although in the past they had such supporters as Patrick Henry,¹ George Mason,² Roger Sherman,³ and Levi Woodbury.⁴ The issue is chiefly between the third and the fourth view. The principal exponents of the third view were James Madison⁵ and Thomas Jefferson,⁶ and of the fourth, John Smilie,⁷ James Wilson,⁸ James Monroe,⁹ and Justice Story.¹⁰

The fourth proposition seems to be the most rational and logical interpretation of the clause. Briefly, the line of reasoning in support of it is this: The power given to Congress by the tax clause is a distinct and independent power, as complete as that to regulate commerce, or as that to coin money, or as any of the other enumerated powers. It is not absolute, however. It is not a power to exercise any function other than that to raise money, and, incidentally, to appropriate and expend it; is limited by the provision that duties, imposts, and excises must be uniform throughout the United States; and is confined to three specified purposes, namely, (1) to pay the debts of the United States, (2) to provide for the common defence of the United States, and (3) to provide for the general welfare of the United States. The general welfare of the United States is a term of broad significance, including any purpose which may promote the general interests of this country. The general interests of agriculture are an important phase of the general welfare.

Among those adopting this course of argument, some regard Congress as the sole judge as to what is for the general welfare; while others contend that its discretion is reviewable by the courts. In either case, the constitutionality of the various appropriations by Congress, to carry on experimental, investigative, and educational work in agriculture, would be sustained.

The most able and convincing opinion on this question is by Story in his work on the Constitution, in the course of which, quoting Hamilton, he says (vol. 1, sec. 978), with reference to the taxing power:

It is, therefore, of necessity left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which,

¹ In the Virginia Constitutional Convention, June 24, 1788, 3 Elliot's Debates, p. 590.

² In the Virginia Constitutional Convention, June 14, 1788, 3 Elliot's Debates, pp. 441, 442.

³ The Journal of New York of Jan. 17, 1788; Davis on the Judicial Veto, p. 104.

⁴ Register of Debates in Congress, Feb. 23, 1830, pp. 181, 182, 183, 187.

⁵ The Federalist, No. 41.

⁶ Views on the Incorporation of a Bank, Feb. 15, 1791, 4 Jefferson's Correspondence, pp. 524, 525.

⁷ McMaster and Stone, Pennsylvania and the Federal Constitution, pp. 269, 768.

⁸ McMaster and Stone, Pennsylvania and the Federal Constitution, pp. 414, 415.

⁹ Views on the subject of internal improvements, May 4, 1822, Messages and Papers of the Presidents, vol. 2, pp. 144-183.

¹⁰ Story, Constitution, 5th ed., vol. 1, sec. 975 et seq.

under that description, an appropriation of money is requisite and proper. And there seems no room for a doubt that, whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, so far as regards an application of money. The only qualification of the generality of the phrase in question, which seems to be admissible, is this, that the object to which an appropriation of money is to be made must be general and not local—its operation extending in fact, or by possibility, throughout the Union, and not being confined to a particular spot. No objection ought to arise to this construction from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication.

As applied to appropriations by Congress to promote the general interests of agriculture in the United States, if assailed in the courts, it is fairly certain that this view would prevail. Not only is it sustained by highly persuasive reasoning, but it is supported by the action of Congress in making such appropriations for the past 75 years. In a case such as this, if there were doubt, the practical construction of the Constitution by legislative action is given great weight by the courts.¹

The establishment and control of national forests in the Western States are based on the power of Congress, under Article IV, section 3, of the Constitution, to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and have been expressly upheld on this ground by the Supreme Court of the United States.²

The purchase of lands for national forests in the Eastern States under the Weeks law is based upon the power of Congress, under Article I, section 8, of the Constitution, to regulate commerce with foreign nations and among the several States. The preservation of the navigability of navigable watercourses of the United States is essential to the existence of commerce thereon, and the protection of the watersheds of such watercourses is deemed essential to the preservation of this navigability. The act concerns itself specifically with the protection of such watersheds, and may thus be said to tend directly to regulate an essential feature of interstate commerce.

The various regulatory acts administered by the Department of Agriculture, with the exception of the migratory bird act and the cotton futures act, are likewise based on the power of Congress under the commerce clause. They are, in effect, an exercise of what may be called the police power of Congress over interstate and

¹ *Stuart v. Laird*, 1 Cranch, 299, 2 L. ed., 115; *Marshall Field & Co. v. Clark*, 143 U. S. 649, 683, 36 L. ed., 294, 307, 12 Sup. Ct. Rep., 495.

² *United States v. Grimaud*, 220 U. S. 506, 55 L. ed., 563, 31 Sup. Ct. Rep., 480; *Light v. United States*, 220 U. S. 523, 55 L. ed., 570, 34 Sup. Ct. Rep., 485.

foreign commerce, and, within the proper scope of their operation, are designed to aid in the protection of the public health, or in safeguarding the people against fraudulent impositions, or in securing other public interests of a like nature.

The cotton futures act rests upon the power of taxation conferred on Congress by the Constitution (Art. I, sec. 8, clause 1). In view of the broad latitude which is allowed to Congress, in the exercise of the power, as recognized by decisions of the United States Supreme Court, there seems to be no sound basis for doubting the validity of this statute.¹

The migratory bird law was upheld recently by Judge Elliott in *United States v. Alfred M. Shaw* in the District Court of the United States for the District of South Dakota (unreported), but was held to be unconstitutional in the case of *United States v. Shauver* in the District Court of Arkansas,² and in the case of *United States v. McCullagh* in the District Court of Kansas.³ In the Shauver case the argument in support of the constitutionality of the act was that migratory birds are either the property of the United States or of the several States; if of the United States, then the law is constitutional as an exercise of a property right granted by the Constitution; if, however, such birds are the property of the several States while within their bounds, then the passage of birds in periodic migrations among the States constitutes interstate commerce, and the act is constitutional as an exercise of the power to regulate interstate commerce. These contentions were overruled by the lower court, and the case is now pending in the Supreme Court of the United States.

The constitutionality of the 28-hour act, the food and drugs act, and the Lacey Act, respectively, have been upheld by decisions of the lower Federal courts.⁴ The constitutionality of the food and drugs act, which is fairly representative of this type of legislation, has, furthermore, been expressly upheld by the United States Su-

¹ In *Hubbard v. Lowe*, 226 Fed., 135, decided by the District Court of the United States for the Southern District of New York in October, 1915, since the above was written, it was held that the cotton futures act is unconstitutional, solely upon the ground that, within the meaning of Article I, section 7, of the Constitution, the bill from which the statute resulted originated in the Senate; no other point was decided. The case is now pending on writ of error in the Supreme Court. See address delivered before Alabama State Bar Association at Montgomery, Ala., July 10, 1915, Service and Regulatory Announcements No. 5, pp. 51-66, Office of Markets and Rural Organization, United States Department of Agriculture; Proceedings of Thirty-eighth Annual Meeting of Alabama State Bar Association, 1915, vol. 38, pp. 170-205.

² 214 Fed., 154.

³ 221 Fed., 288.

⁴ *Southern P. Co. v. United States*, 96 C. C. A. 252, 171 Fed., 360; *Shawnee Mill Co. v. Temple*, 179 Fed., 517; *United States v. 420 Sacks of Flour*, 180 Fed., 518; *United States v. 74 Cases of Grape Juice*, 181 Fed., 629; *Rupert v. United States*, 104 C. C. A. 255, 181 Fed., 87.

preme Court in one case¹ and recognized by it in a number of other cases.² The validity of each of the other legislative acts, with the administration of which the department is charged, except the migratory bird act and the cotton futures act, rests upon the same principles as that of the food and drugs act, and, it is safe to assume, would be sustained by the United States Supreme Court on the same grounds.³

¹ *Hipolite Egg Co. v. United States*, 220 U. S., 45, 55 L. ed., 364, 31 Sup. Ct. Rept., 364.

² *Savage v. Jones*, 225 U. S. 501, 56 L. ed., 1182, 32 Sup. Ct. Rept., 715; *443 Cans of Frozen Egg Product v. United States*, 226 U. S. 172, 57 L. ed., 174, 33 Sup. Ct. Rept., 50; *Hoke v. United States*, 227 U. S. 308, 322, 57 L. ed., 523, 33 Sup. Ct. Rept., 281, Ann. Cas. 1913E, 905, 43 L. R. A. (N. S.), 906; *McDermott v. Wisconsin*, 228 U. S. 115, 57 L. ed., 754, 33 Sup. Ct. Rept. 431, Ann. Cas. 1915A, 39, 47 L. R. A. (N. S.), 984; *Seven Cases of Eckman's Alterative v. United States*, 239 U. S. 510, 36 Sup. Ct. Rep., 190.

³ Since the publication of the foregoing in "Case and Comment," there have been enacted the Federal aid road act of July 11, 1916 (Public, No. 156), and the Agricultural appropriation act for the fiscal year 1917, approved August 11, 1916 (Public, No. 190), providing for extension of the activities of the department, and including a grain standards act, a warehouse act, and the reenactment of the cotton futures act.

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